

THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:
Jon Miller

Serial No.: 09/280,279

Filed: March 29, 1999

Attorney Docket No.: P-1109

For: Substance To Prevent Or Reverse
Weight Gain Induced By Psychoactive
Agents

Art Unit: 1616

Examiner: Sharareh, S.

HON. Commissioner of Patents & Trademarks
Washington, DC 20231

DECLARATION

* * * * *

Jon M. Miller, being duly sworn, does hereby depose and state as follows:

1. I am the inventor of the invention described in Patent Application Serial Number: 09/280,279, filed on March 29, 1999, "Substance To Prevent or Reverse Weight Gain Induced By Psychoactive Agents."
2. I developed my idea for the patent in issue and thereafter began looking for a patent attorney in early 1999.
3. I obtained the patent attorney via an internet search where I found the website for "Intellectual Property Management, Inc. ("IPM").
4. When I contacted IPM by telephone I was immediately transferred to attorney Matthew J. Cohen.

5. I spoke with Mr. Cohen, and per his request, forwarded to him a written summary of the materials applicable to the patent in issue.

6. On February 17, 1999, I overnighted a letter detailing my goals and objectives for my patent and included the information that I thought Mr. Cohen would need to prepare my patent application.

7. After reviewing the enclosed material, Mr. Cohen telephoned me requesting additional information about the specific drug combinations. I overnighted this information to him on February 23, 1999.

8. On March 5, 1999, I sent a check to IPM for \$2,500 as a retainer which cleared my bank on March 15, 1999. See **Exhibit A**.

9. On March 25, 1999, I received a fax of the proposed patent application, made corrections as I deemed appropriate and overnighted the material back to Mr. Cohen's office.

10. On March 30, 1999, I received a phone call from Mr. Cohen informing me that my patent application had been filed and requesting an additional payment in the amount of \$2,500 plus an additional \$380 for the patent filing fee. This check was mailed to IPM on that date and cleared my bank on April 7, 1999. See **Exhibit B**.

11. Thereafter, Mr. Cohen explained to me that the patent process is lengthy but that I need not worry about any of the details involved. I telephoned him on or about June 28, 1999, at which time he informed me that everything relating to my patent application was on schedule.

12. During Thanksgiving week, 1999, I again contacted Mr. Cohen. At that time, he informed me that everything was "okay."

13. In early March of 2000, I again telephoned Mr. Cohen and was told that he hadn't heard anything else and was again reassured that a patent application takes time.

14. I again contacted Mr. Cohen in March, 2001 and I was informed by IPM's secretary that Mr. Cohen was no longer employed by IPM, that he had taken his files with him and that IPM only had an e-mail address for Mr. Cohen.

15. On March 29, 2001, I e-mailed Mr. Cohen regarding the status of my patent application. Mr. Cohen replied by e-mail on April 2, 2001 that "my former office has screwed me completely and I have lost all the information relating to my files." I replied the same day inquiring about possible recourse. See attached **Exhibit C**.

16. At this time I also contacted the USPTO and was informed that an office action had been sent out on November 22, 1999 and that my application had been abandoned effective February 23, 2000.

17. On April 2 and 3, 2001, I received two e-mails from Mr. Cohen explaining what "abandoned" means and saying that we could re-file the application. Mr. Cohen also informed me that he had lost tens of thousands of dollars because his former partners have ruined his legal career. See attached **Exhibit D**.

18. I responded to Mr. Cohen's e-mail explaining that we could not file a new application and that we needed to try to revive the original application because I was certain that new art had been published and other similar patents had probably been filed during the course of my application's prosecution. See attached **Exhibit E**.

19. On April 9, 2001 Mr. Cohen informed me that he would see what he could do.

See attached **Exhibit F**.

20. Notwithstanding, Mr. Cohen has never contacted or attempted to contact me again.

21. I was never aware of the exact relationship between Mr. Cohen and IPM.

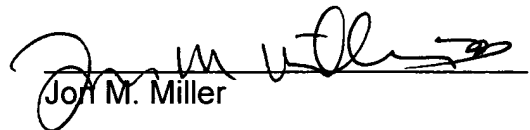
22. There was never any discussion with IPM or Mr. Cohen regarding either my rights or my responsibilities during the patent prosecution process. I never had any warnings or discussions with either IPM or Mr. Cohen about how essential it is to be timely when responding to office actions.

23. On July 23, 2001, at my new attorneys' directive, I sent a summary of this information to Andy Roberts in the offices of Enrollment and Discipline at the USPTO. See letter attached as **Exhibit G**.

24. At no time was I aware of the complex requirements of a patent's prosecution or the steps necessary in order to avoid a patent application's abandonment. I therefore relied upon my attorney to properly perform his duties.

25. My patent application was unintentionally and unavoidably delayed as a result of both Mr. Cohen's misrepresentations and malpractice.

I declare under penalty of perjury that the above statements are true and correct.


Jon M. Miller



MERRILL LYNCH **CMA** ACCOUNT

Summary of Checking Activity

Date Cleared	Date Written	Check Number	Payee	Amount	Cash Balance	Share Balance
03/15	03/05	101	INTELLIGUAL PROP MGMT	2,500.00		
			Total Checking Activity	2,500.00		

Daily Activity Review

Date	Transaction	Quantity	Description	Price	Amount	Cash Balance	Share Balance
02/26	Opening Balance						
03/01	Purchase	100	CMA MONEY FUND		100.00	100.19CR	18,449
03/03	Journal Entry		TR FROM 58516M21		1,648.59CR	.19CR	18,549
			N/O GERTRUDE Y CHENEY TT				
			VS 58516M21 UNIT 41W				
			BATCH # = 00030495055				
03/04	Purchase	1,648	CMA MONEY FUND		1,648.00	1,648.78CR	18,549
03/10	Journal Entry		TR FROM 58516M21		1.00CR	.78CR	20,197
			N/O GERTRUDE Y CHENEY TT				
			VS 58516M21 UNIT 41W				
			BATCH # = 00039427669				
03/11	* Dividend		PFIZER INC DEL PVS0.05		9.02CR	1.78CR	20,197
			HOLDING 41.0000				
03/12	Purchase	49	BEST BUY CO INC	98.125	4,918.48	10.80CR	20,197
03/12	Purchase	77	LOWES COMPANIES INC	63.187	4,975.79		
03/12	Purchase	156	STAPLES INC	31.062	4,971.76		
03/12	* Sale	-106	WEINGARTEN RLTY INVS SBI	40.812	4,215.00CR		
			PRICE 40 13/ 16				



MERRILL LYNCH **CMA** ACCOUNT

Tax Information Summary

This Statement Year-to-Date

Accrued Interest Paid
Tax-Exempt
Reportable

Accrued Interest Received
Tax-Exempt
Reportable

Gross Proceeds

27.91

4,242.91

Although we provide complete year-to-date information for Reportable Accrued Interest Received, Accrued Interest Paid and Tax-Exempt Accrued Interest Received and Paid include only those months we produce your profit and loss statement.

Summary of Checking Activity

Date Cleared	Date Written	Check Number	Payee	Amount	Date	Transaction	Quantity	Description	Price	Amount	Cash Balance	Share Balance
04/07	03/31	102	INTELLECTUAL PROP MGMT	2,880.00								
04/19	04/12	103	MERRILL LYNCH	2,000.00								
			Total Checking Activity	4,880.00								
			Daily Activity Review									
03/26			Opening Balance							.56CR		7,179



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"Outbox" Msg: 5 of 6**From:** Jon Miller <jonmiller@pol.net>**To:** matthewjcohenlaw@yahoo.com**Subject:** patent application**Date:** 03/29/2001 05:10pm**Address Book:** [Add Sender to Address Book](#) | [Go to Address Book](#)**Move to Folder:**

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Matt,

This is the two year anniversary for the patent application (#09/280279) and I wondered if anything has come of it. Your former office said you took your files with you but only had an email address so I hope this gets through. Looking forward to hearing from you.

Jon M Miller, MD

502 4261500 (9-5 Eastern time) or jonmiller@pol.net

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"Business" Msg: 3 of 19

From: Matthew Cohen <matthewjcohenlaw@yahoo.com>

To: Jon Miller <jonmiller@pol.net>

Subject: Re: patent application

Date: 04/02/2001 01:02pm

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Jon,

My former office has screwed me completely. They have caused me to lose files and phone contacts. They have also caused me to miss correspondence with the USPTO on many occasions. They have ruined my life and my career and cause me \$30,000 more debt than I had before I went into business there. I am destitute and trying to pick up the pieces. Because of them, I have lost all information relating to all files, now that I have your application number I will inquire to its status. Im just hope they haven't done anything to jeopardize the filing. I have lost other filings because of them and have been caused much aggravation and financial losses.

Sincerely,
Matthew J. Cohen

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"Outbox" Msg: 3 of 6

From: Jon Miller <jonmiller@pol.net>

To: Matthew Cohen <matthewjcohenlaw@yahoo.com>

Subject: Re: Re: patent application

Date: 04/02/2001 07:59pm

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Matt,

Sorry to hear about your troubles.

What exactly does it mean to "lose a filing"? I spent two years developing the idea and two more years waiting for the patent. Scientific papers are just coming out validating my patent scheme. The idea should add several years to the life of a \$4 billion dollar a year drug. That's a lot of time and money invested. If something has happened to the filing, what recourse do I have?

Please contact me ASAP regarding the status of the patent. I applied for a USPTO access code one week ago but at this point I don't have access to PAIR. The patent app number comes up invalid but I'm not sure that its available to anyone but the registered agent.

Obviously, I'm scared. Please let me know something.

--Jon

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"Business" Msg: 2 of 19**From:** Matthew Cohen <matthewjcohenlaw@yahoo.com>**To:** Jon Miller <jonmiller@pol.net>**Subject:** Re: Re: patent application**Date:** 04/03/2001 01:20pm**Address Book:** [Add Sender to Address Book](#) | [Go to Address Book](#)**Move to Folder:**

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Well,

We can refile the application, that is probably the
quickest recourse available.

Matthew

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"Business" Msg: 1 of 19**From:** Matthew Cohen <matthewjcohenlaw@yahoo.com>**To:** Jon Miller <jonmiller@pol.net>**Subject:** Re: Re: patent application**Date:** 04/03/2001 01:30pm**Address Book:** [Add Sender to Address Book](#) | [Go to Address Book](#)**Move to Folder:**

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Meaning paperwork never got to me from the USPTO and the filing might not be active. I have lost ten's of thousands of dollars because of my former "partners" and they have ruined my legal career, such a long story and I;m sure you don't want to hear it. But lets get this refiled right away, would be the easiest thing to do.

Matthew Cohen

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"Outbox" Msg: 2 of 6**From:** Jon Miller <jonmiller@pol.net>**To:** Matthew Cohen <matthewjcohenlaw@yahoo.com>**Subject:** Reapplication for patent**Date:** 04/03/2001 06:04pm**Address Book:** [Add Sender to Address Book](#) | [Go to Address Book](#)**Move to Folder:**

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Matt,

I heard through a colleague that Lilly had filed a similar patent about a year ago so we need to try to reactivate the original application or (I assume) their patent would take precedence. I know its a hassle but we are talking about a 7-figure sum of money. Surely something can be done.

--Jon

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"Inbox" Msg: 1 of 2

From: Matthew Cohen <matthewjcohenlaw@yahoo.com>

To: Jon Miller <jonmiller@pol.net>

Subject: Re: Reapplication for patent

Date: 04/09/2001 09:49am

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Jon,

I'll see what I can do, the patent office usually has strict procedural issues. But nevertheless, I will look into it.

Matthew

PSYCHIATRIC ASSOCIATES OF LOUISVILLE, PSC

Browenton Place
2000 Warrington Way, Suite 160
Louisville, KY 40222-6401

(502) 426-1500
Fax (502) 425-6803

23 July 2001

USPTO
Box OED
Washington, DC 20231

Attn: Andy Roberts
File #C2001-67

Dear Sir,

I understand that a letter from my attorney has been forwarded to the Office of Enrollment and Discipline and I wish to provide a narrative account of my experiences with Matthew J. Cohen and Intellectual Property Management, Inc. I had been developing my idea for the patent for some time and began looking for a patent attorney in early 1999. I searched the Internet and, on 2/16/99, I found the website for Intellectual Property Management, Inc. (IPM) describing the process, their approximate fees, and containing "learn about patents" information. Shortly thereafter, I contacted Intellectual Property Management, Inc. by telephone and was transferred to Matthew J. Cohen. We spoke briefly and he asked that I forward to him a written summary of the material. He also stated that a standard chemical patent would cost \$5000 for preparation and filing. On 2/17/99 I overnighted a letter detailing my goals and objectives for the patent and listing the information that I thought he would need to prepare the documentation. On 3/5/99, I sent a check to IPM for \$2500 as a retainer (see attached) which cleared on 3/15/99. After reviewing the material, Mr. Cohen telephoned me requesting additional information about the specific drug combinations that I was proposing and I overnighted this information to him on 2/23/99. On 3/25/99, I received a fax of the proposed patent application, made corrections as I thought appropriate, and overnighted the material back to the Intellectual Property Management office. I received a telephone call on 3/30/99 from Mr. Cohen informing me that the application had been filed and requesting additional payment in the amount of \$2500 plus an additional \$380 for the patent filing fee. A check was mailed to IPM on that date and cleared on 4/7/99 (see attached). I recall that he explained that the patent process was lengthy and that I need not worry about things. I believe I telephoned him on 6/28/99 at which time he explained that everything was on schedule and returned, by fax, 2 pages consisting of the filing receipt and the "license for foreign filing" explanation. I made no further contact with him until Thanksgiving week, 1999 when I telephoned his office. He informed me that "everything was okay". In early March, 2000 I again telephoned him and was told, if I recall correctly, that "I


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1.69496801

haven't heard anything else" and again was reassured that patent applications take time. About this time, my medical practice changed somewhat and I did not attempt to contact Mr. Cohen until March, 2001. I was informed by the secretary at Intellectual Property Management that Mr. Cohen had left and "taken his files with him" and that IPM only had an e-mail address for him. I contacted him by e-mail on 3/29/01 asking about the status of the patent. He replied by e-mail on 4/2/01 that "my former office has screwed me completely..." and "...I have lost all information relating to all files...." I replied the same day and inquired about possible recourse. Also, at that point I had contacted the USPTO and was informed that an "office action" had been sent out on 11/22/99 and that the application had been "abandoned", effective 2/23/00. On 4/3/01 I received two e-mails from Mr. Cohen saying that we could refile the application and explaining what "abandoned" means. He also stated that "I have lost tens of thousands of dollars because of my former partners and they have ruined my legal career" I replied by e-mail that "we need to try to reactivate the original application" since I was certain that other similar patents would have been filed over the preceding two years. He replied on 4/9/01 that "I'll see what I can do...." I have had no further contact with Mr. Cohen. On 4/5/01 I retained a new attorney, and after discussing the situation, I signed a "power of attorney by inventor" for the new firm which was filed on 5/9/01.

I was never aware of the relationship between Mr. Cohen and Intellectual Properties Management, Inc. nor was any effort made to delineate that relationship, any conflicts of interest, etc. Although I had read the very general "learn about patents" section on the IPM web page, there was never any discussion about my rights or responsibilities nor was there any warning about issues of timeliness or the very complex patent application process. There was no written contractual agreement between myself, Mr. Cohen or IPM nor were there any billing statements or receipts (other than my canceled checks) for the process. I believed that Intellectual Properties Management was a bona fide law firm specializing in patent law.

I hope this explanation is of benefit to you. If you have questions, please contact my office.

Sincerely,



Jon M. Miller M.D. Ph.D.

Attachments
cc: Claire Cox, Esq.

Psychiatric Associates of Louisville, PSC

2000 Warrington Way, Suite 160, Louisville, KY 40222-6467 (502) 426-1500, Fax (502) 425-6803

3/30/99

Matthew Cohen
Intellectual Property Management
21550 Oxnard St. 3rd Floor
Woodland Hills, CA 91367

Dear Matt,

Please find enclosed a check for \$2880 (\$2500 for your fee and \$380 for the patent filing fee.) I look forward to hearing from you re: the next step in the process.

Sincerely,



Jon M. Miller, MD, PhD